

In the  
Indiana Supreme Court

**CASE NUMBER:**

**ORDER AMENDING RULES FOR ADMISSION TO THE BAR AND  
THE DISCIPLINE OF ATTORNEYS**

Under the authority vested in this Court to provide by rule for the procedure employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts of this state, Rule 23 of the Indiana Rules for Admission to the Bar and the Discipline of Attorneys and the Indiana Supreme Court Disciplinary Commission Rules Governing Attorney Overdraft Reporting are amended to read as follows (deletions shown by ~~striking~~ and new text shown by underlining):

**INDIANA RULES FOR ADMISSION TO  
THE BAR  
AND THE  
DISCIPLINE OF ATTORNEYS**

...

**Rule 23. Disciplinary Commission and Proceedings**

**Section 29. Maintenance Of Trust Funds In Approved Financial Institutions;  
Overdraft Notification.**

*(a) Clearly Identified Trust Accounts In Approved Financial Institutions And Related Recordkeeping Requirements.*

(1) Attorneys shall deposit all funds held in trust in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts" and shall inform the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation,

whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Commission.

(2) Every attorney shall maintain and preserve for a period of at least five (5) years, after final disposition of the underlying matter, the records of trust accounts, including checkbooks, canceled checks, check stubs, written withdrawal authorizations, vouchers, ledgers, journals, closing statements, accounting or other statements of disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries and disbursements of the funds or other property held in trust.

(3) The "ledger" required by this rule shall set forth a separate record of each trust, client or beneficiary, the source of all funds deposited in that account, the names of all persons for whom the funds are, or were, held, the amount of such funds, the description and the amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed.

(4) All receipts shall be deposited intact, funds shall not be commingled with other funds of the attorney or firm, and records or deposits shall be sufficiently detailed to identify each item.

(5) Withdrawals shall be based upon a written withdrawal authorization stating the amount of the withdrawal, the purpose of the withdrawal, and the payee. The authorization shall contain the signed approval of an attorney. Withdrawals shall be made only by wire transfer or by check payable to a named payee and not to "cash", ~~or by wire transfer~~. Wire transfers shall be authorized by written withdrawal authorization and evidenced by a document from the financial institution indicating the date of the transfer, the payee and the amount.

(6) Only an attorney admitted to practice law in this jurisdiction or his or her designee shall be an authorized signatory on the account.

(7) Records required by this rule may be maintained by electronic, photographic, computer or other media provided they otherwise comply with this rule and provided further that printed copies can be produced.

(8) Upon dissolution of any partnership of attorneys or of any professional corporation of attorneys, the partners or shareholders shall make appropriate written arrangements for the maintenance of the records specified under this rule.

(9) Upon the disposition of a law practice, appropriate written arrangements for the maintenance of the records specified in this rule shall be made.

(b) *Overdraft Notification Agreement Required.* A financial institution shall be approved as a depository for trust accounts if it files with the Commission an agreement, in a form provided by the Commission, to report to the Commission whenever any properly payable instrument is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The Commission shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree so to report. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Commission.

(c) *Overdraft Reports.* The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(d) *Timing of Reports.* Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(e) *Consent By Attorneys.* Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(f) *Costs.* Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

(g) *Definitions.* For purposes of this rule:

(1) "Financial institution" means ~~includes~~ a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

(2) "Properly payable" means ~~refers to~~ an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(3) "Notice of dishonor" means ~~refers to~~ the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

(4) "Trust account" means ~~any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.~~

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## **INDIANA SUPREME COURT DISCIPLINARY COMMISSION RULES GOVERNING ATTORNEY TRUST ACCOUNT OVERDRAFT REPORTING**

The following rules and procedures, issued pursuant to the authority granted to the Indiana Supreme Court Disciplinary Commission by the Supreme Court of the State of Indiana in Admission and Discipline Rule 23, Sections 24 and 29(b), govern the administration of an attorney trust account overdraft reporting program in the State of Indiana.

### **Rule 1. Definitions**

As used herein:

A. "Financial institution" means ~~includes~~ a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by attorneys.

B. "Trust account" means ~~refers to~~ any account maintained by an attorney admitted to practice law in the State of Indiana for the purpose of keeping funds belonging to clients or third parties separate from the attorney's own funds as required by Indiana Rule of Professional Conduct 1.15(a). It also means any account maintained by an attorney for funds held in trust in connection with a representation in any other fiduciary capacity, including as trustee, agent, guardian, executor, or otherwise.

C. "IOLTA (Interest on Lawyer Trust Account)" means an attorney trust account in a financial institution pursuant to Indiana Admission and Discipline Rule 1.15(f).

DC. "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of the State of Indiana.

## **Rule 2. Approval of Financial Institutions**

**A.** Indiana Admission and Discipline Rule 23, Section 29(a)(1) requires that attorneys maintain trust accounts only in financial institutions that are approved by the Disciplinary Commission. A financial institution shall be approved by the Disciplinary Commission as a depository for trust accounts if it files with the Disciplinary Commission a written agreement, in the form attached hereto as Exhibit A, whereby it agrees to report to the Disciplinary Commission whenever it has actual notice that any properly payable instrument is presented against a trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

**B.** The written agreement of any financial institution is binding upon all branches of the financial institution.

**C.** The Disciplinary Commission will maintain a public listing of all approved financial institutions and will publish the same each year in the December issue of *Res Gestae*, the monthly journal of the Indiana State Bar Association. The names of approved financial institutions will be available at other times by written or telephone inquiry to the Disciplinary Commission.

**D.** The written agreement of any financial institution will continue in full force and effect and be binding upon the financial institution until such time as the financial institution gives thirty (30) days notice of cancellation in writing to the Disciplinary

Commission, or until such time as its approval is revoked by the Disciplinary Commission.

### **Rule 3. Disapproval and Revocation of Approval of Financial Institutions**

**A.** A financial institution shall not be approved in the first instance as a depository for trust accounts unless it submits to the Disciplinary Commission an agreement in the form attached hereto as Exhibit A that is binding upon all of its branches and signed by an officer with authority to act on behalf of the institution. The refusal of the Disciplinary Commission to approve a financial institution due to its failure or refusal to submit an executed written agreement in the form attached as **Exhibit A** is not appealable or otherwise subject to challenge.

**B.** The approval of a financial institution shall be revoked and the institution shall be removed by the Disciplinary Commission from the list of approved financial institutions if it engages in a pattern of neglect or acts in bad faith in not complying with its obligations under the written agreement.

**C.** The Executive Secretary shall communicate any decision to revoke the approval of a financial institution in writing by certified mail to the institution in care of the officer who signed the written agreement. The notice of revocation shall include a specific statement of facts setting forth the reasons in support of the revocation decision. Thereafter, the financial institution shall have a period of thirty (30) days from the date of receipt of the notice of revocation to file a written request with the Executive Secretary seeking reconsideration of the revocation decision. In the event an institution timely seeks reconsideration, the Disciplinary Commission shall appoint one of its members to act as hearing officer to take evidence. The Executive Secretary or designee shall act to defend the revocation decision. The hearing officer, after taking evidence, shall report findings and conclusions for review by the full Disciplinary Commission, whose decision in the matter shall be final. The approved status of a financial institution shall continue until such time as the reconsideration process is final.

**D.** Once the approval of a financial institution has been revoked, the institution shall not thereafter be approved as a depository for trust accounts until such time as the institution petitions the Disciplinary Commission for approval and includes within the petition a plan for curing any deficiencies that caused its earlier revocation and for periodically reporting compliance with the plan in the future.

#### **Rule 4. Duty to Notify Financial Institutions of Trust Accounts**

**A.** Every attorney shall notify each financial institution in which he or she maintains any trust account, as defined above, that the account is subject to the provisions of overdraft reporting. For each trust account, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.

1) For IOLTA accounts as required by Rule 1.15(f), notice by the attorney to the financial institution that the account is an IOLTA account shall constitute notice to the financial institution that the account is subject to overdraft reporting to the Disciplinary Commission.

2) For non-IOLTA trust accounts as permitted by Rule 1.15(h), every attorney shall notify each financial institution that the account is subject to overdraft reporting to the Disciplinary Commission by submitting a notice in the form attached as **Exhibit B** for each such account to the financial institution in which the account is maintained. ~~Such notice must be provided on or before January 1, 1997 for each trust account then in existence and contemporaneously with the opening of any trust account opened thereafter.~~ For each trust account, a lawyer or law firm shall maintain a copy of each such notice throughout the period of time that the account is open and for a period of five (5) years following closure of the account.

**B.** In the case of a law firm that maintains one or more trust accounts in the name of the firm, only one notice from a member of the firm need be provided for each such



trust account. However, every member of the firm is responsible for insuring that notice of each firm trust account is given to each financial institution wherein an account is maintained.

~~C. No financial institution shall be responsible for forwarding a report of any overdraft on an account about which it has not received notice from the depositor attorney that it is a trust account subject to overdraft reporting.~~

#### **Rule 5. Duty of Financial Institutions**

A. Each financial institution shall report to the Indiana Supreme Court Disciplinary Commission any properly payable attorney IOLTA or non-IOLTA trust account instrument presented against insufficient funds as set forth in Indiana Admission and Discipline Rule 23, Section 29(b) through (g) and these rules irrespective of whether the instrument is honored.

B. No financial institution shall be responsible for forwarding a report of any overdraft on an account about which it has not received notice pursuant to Rule 4(A)(1) or (2) above from the depositor attorney that it is a trust account subject to overdraft reporting.

#### **Rule 6. 5. Processing of Overdraft Reports by the Commission**

A. Whenever the Disciplinary Commission receives an overdraft notice from a financial institution, the Executive Secretary shall send a letter to the depositor attorney seeking a documented explanation of the overdraft within ten (10) business days. This letter is a demand for information, noncompliance with which is a violation of Professional Conduct Rule 8.1(b). If bank error is claimed by the attorney, a written statement from a bank officer must be submitted with the explanation. If office error is claimed by the attorney, affidavits from the appropriate office personnel must be submitted with the explanation.

**B.** If the depositor attorney does not provide a timely explanation or if the explanation provided does not document the existence of bank error or isolated office inadvertence, the Executive Secretary shall present the matter to the full Disciplinary Commission to consider the issuance of a grievance pursuant to Indiana Admission and Discipline Rule 23, Section 10(a). Thereafter, the procedures of Admission and Discipline Rule 23 for the processing of grievances shall apply.

#### **Rule 7. 6. Miscellaneous Matters**

~~**A.** Admission and Discipline Rule 23, Section 29(e) requires that every attorney practicing or admitted to practice law in the State of Indiana is conclusively deemed to have consented to overdraft reporting and production requirements.~~

~~**B.** Nothing in Admission and Discipline Rule 23, Section 29 precludes a financial institution from charging an attorney or law firm for the reasonable cost of producing overdraft reports and records.~~

**AC.** Any attorney who is admitted to practice law in another jurisdiction having attorney trust account overdraft notification rules that are substantially similar to the Indiana rules governing attorney trust account overdraft notification may apply to the Disciplinary Commission for exemption from compliance with these rules to the extent that the attorney maintains trust funds belonging to Indiana clients in a trust account in a foreign jurisdiction that is subject to overdraft reporting under the rules of that jurisdiction. Any such application for exemption shall be in writing and shall include:

- 1) a copy of the rules from the other jurisdiction governing attorney trust account overdraft notification;
- 2) a copy of the agreement between the applicable financial institution and the agency in the foreign jurisdiction that administers the overdraft notification program verifying that the financial institution participates in the foreign jurisdiction's attorney trust account notification program;

3) a list of the names of all financial institutions, account names, and account numbers of all trust accounts maintained by the attorney in the foreign jurisdiction; and

4) a certification under oath by the attorney that each such foreign trust account has been properly identified to the foreign financial institution as an attorney trust account subject to overdraft reporting.

Any attorney seeking exemption under the terms of this provision is under a continuing obligation to immediately report any changes in the information provided to the Disciplinary Commission.

**BD.** Admission and Discipline Rule 23, Section 29(a)(6) contemplates that a designee who is not admitted to practice law in Indiana may be an authorized signatory on a trust account. In the event an attorney or law firm delegates trust account signature authority to any person who is not admitted to practice law in Indiana, such delegation ~~on~~ shall be accompanied by specific safeguards, including at a minimum the following:

1a. All periodic account activity statements from the financial institution shall be delivered unopened to and reviewed by an attorney having supervisory authority over the non-attorney signatory; and

2b. Responsibility for conducting periodic reconciliations between internal trust account records and periodic trust account activity statements from the financial institution shall be vested in a person who has no signature authority over the trust account.

**CE.** All communications from financial institutions to the Disciplinary Commission shall be directed to: Executive Secretary, Indiana Supreme Court Disciplinary Commission, 115 West Washington Street, Suite 1165 ~~1060~~, Indianapolis, Indiana 46204.

## **Exhibit A. Trust Account Overdraft Reporting Agreement**

TO: INDIANA SUPREME COURT DISCIPLINARY COMMISSION  
115 West Washington Street  
Suite ~~1165~~<sup>1060</sup>  
Indianapolis, Indiana 46204

The undersigned, being a duly authorized officer of \_\_\_\_\_, a financial institution doing business in the State of Indiana, and the agent of the named financial institution specifically authorized to enter into this agreement, hereby applies to be approved to receive attorney trust accounts in the State of Indiana. In consideration of the Indiana Supreme Court Disciplinary Commission's approval of the named financial institution, the institution agrees to comply with the reporting requirements for such institution as set forth in Indiana Admission and Discipline Rule 23, § 29(b) through (g) and the Rules Governing Trust Account Overdraft Reporting promulgated by the Disciplinary Commission, as now in effect and as hereafter amended from time to time.

Specifically, the named financial institution agrees:

(1) To report to the Indiana Supreme Court Disciplinary Commission in the event it has actual notice that any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether ~~or not~~ the instrument is honored (This obligation applies to both IOLTA trust accounts under Indiana Admission and Discipline Rule 1.15(f) and non-IOLTA attorney trust accounts under Indiana Admission and Discipline Rule 1.15(h));

(2) That all such reports shall be in substantially the following format:

- (a) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor and should include a copy of the dishonored instrument, if such a copy is normally provided to the depositor;
- (b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the

depositor attorney or law firm, the account number, the date of presentation for payment, the date paid, and the amount of the overdraft created thereby.

(3) That all such reports shall be made within the following time periods:

(a) in the case of a dishonored instrument, simultaneously with, and within the time provided by law for, notice of dishonor;

(b) in the case of an instrument that is presented against insufficient funds but which instrument is honored, within five (5) banking days of the date of presentation for payment against insufficient funds.

(4) To provide the Disciplinary Commission with the name and contact information of the financial institution's primary point of contact for matters pertaining to its responsibilities under this agreement, and to promptly update that contact information in the event it changes.

This agreement shall apply to all branches of the named financial institution and shall not be canceled except upon thirty (30) days notice in writing to the Executive Secretary, Indiana Supreme Court Disciplinary Commission, 115 West Washington Street, Suite 1165-1060, Indianapolis, Indiana 46204.

Name, ~~and~~ Address, and Telephone Number of Contact Person ~~Main Branch for of~~ Financial Institution:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**DATE:** \_\_\_\_\_

\_\_\_\_\_  
Signature of Authorized Official

**CORPORATE**

\_\_\_\_\_  
Printed or Typed Name of Authorized  
Official

**SEAL**

\_\_\_\_\_  
Title or Position of Authorized Official

**ACKNOWLEDGMENT**

**STATE OF INDIANA**       )  
  ) ss:  
**COUNTY OF** \_\_\_\_\_ )

On the \_\_\_\_ day of \_\_\_\_\_, 20 ~~199~~\_, before me, a Notary Public in and for the State of Indiana, personally appeared the above-named individual, known to me to be the person executing the foregoing instrument, and acknowledged and executed said instrument as his/her free and voluntary act and deed.

\_\_\_\_\_  
Notary Public (signature)

\_\_\_\_\_  
Notary Public (printed or typed)

My Commission Expires: \_\_\_\_\_  
County of Residence: \_\_\_\_\_

**ACCEPTANCE**

The named financial institution is hereby approved by the Indiana Supreme Court Disciplinary Commission as a depository for attorney trust accounts in the State of Indiana until such time as this agreement is canceled upon thirty (30) days' written notice to the Commission by the institution or is revoked by action of the Disciplinary Commission.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Executive Secretary  
Indiana Supreme Court Disciplinary  
Commission

**Exhibit B. Attorney Trust Account Notification**

\_\_\_\_\_  
Name of Attorney Attorney Number

\_\_\_\_\_  
Name of Law Firm

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Name of Financial Institution

\_\_\_\_\_  
Business Address

\_\_\_\_\_  
City State Zip Code

\_\_\_\_\_  
Name of Account

\_\_\_\_\_  
Account Number \_\_\_\_\_ New \_\_\_\_\_ Existing

Type of Account:

\_\_\_\_ Trust      \_\_\_\_ Guardian

\_\_\_\_ Escrow      \_\_\_\_ Estate

\_\_\_\_ Other \_\_\_\_\_  
(Please Describe)

The undersigned hereby certifies that he/she is an attorney licensed to practice law in the State of Indiana and that the information indicated above provided to his/her financial institution is accurate. This information is provided to permit the financial institution to report all overdraft or insufficient funds occurrences to the Indiana Supreme Court

Disciplinary Commission pursuant to Indiana Admission and Discipline Rule 23, Section 29.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

This amendment shall take effect immediately.

The Clerk of this Court is directed to forward a copy of this order to the clerk of each circuit court in the state of Indiana; Attorney General of Indiana; Legislative Services Agency and its Office of Code Revision; Administrator, Indiana Supreme Court; Administrator, Indiana Court of Appeals; Administrator, Indiana Tax Court; Public Defender of Indiana; Prosecuting Attorney's Council; Indiana Supreme Court Disciplinary Commission; Indiana Supreme Court Commission for Continuing Legal Education; Indiana Board of Law Examiners; Indiana Judicial Center; Division of State Court Administration; Indiana Judges and Lawyers Assistance Program; the libraries of all law schools in this state; the Michie Company; and the West Group.

The West Group is directed to publish this Order in the advance sheets of this Court.

The Clerks of the Circuit Courts are directed to bring this Order to the attention of all judges within their respective counties and to post this Order for examination by the Bar and general public.

DONE at Indianapolis, Indiana, this \_\_\_\_\_ day of April, 2005.

\_\_\_\_\_  
Randall T. Shepard  
Chief Justice of Indiana

All Justices concur.